IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 746 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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STATE OF GUJARAT

Versus

GUJ.STATE CO.OP. FRUIT & VEGE.MARKETING FEDERATION LIMITED

Appearance:

1. First Appeal No. 746 of 1981

MR. M.A. BUKHARI, AGP, for Petitioner No. 1

MS. KALPANA BRAHMBHATT FOR MS. VASUBEN P SHAH for Respondent No. 1

Respondent Nos. 2 to 5 are served.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 10/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

The State of Gujarat-appellant original defendant No. 2 has filed this First Appeal under Section 96 of the Code of Civil Procedure against judgement and decree dated 6.12.1980 passed by the Second Joint Civil Judge (S.D.) Surat in Special Civil Suit No. 232 of 1975. The learned Judge by his impugned judgement has held that the plaintiff Gujarat State Co-opeartive Fruit & Vegetable Marketing Federation Ltd.'s claim for interest of Rs. 1,57,944.33 ps. is allowed. Defendant Nos. 1 and 2, namely, the Union of India, New Delhi and the State of Gujarat, are jointly and severally liable to pay the said amount. The learned judge has held that the decree be considered as part of the decree drawn on 19.4.1976.

2. The facts giving rise to this appeal are as under:

2.1 The plaintiff is a Co-operative Society registered under the Gujarat Co-operative Societies Act, having its office at Bardoli, District Surat. Defendant No. 1, the Union of India had imported fertilizers from foreign countries through defendant No. 3, namely, the Food Corporation of India Ltd. Such imported fertilizers were to be allotted by the Director of Agriculture to different States and accordingly the said fertilizers were also allotted to the Gujarat State through defendant No. 2. Initially the Gujarat State Co-operative Marketing Society Ltd. defendant No. 4 was appointed as distributing agent. During the course of the said transaction and distribution of the fertilizers, large quantity of fertilizers had accumulated at the docks during the course of four or five years and were allowed to remain in open places at the docks without any protection. As a result of which the bags which contained the fertilizers became wet and the contents of some of the bags were completely washed out and the quantity which remained largely deteriorated. As a result of which Government of India, defendant No. 1, wanted to dispose of the said stock. In pursuance of the said subject, the Director of Agriculture, Gujarat State, wrote a letter dated 14.9.1973 to the plaintiff wherein he made an offer to the plaintiff to sell the said fertilizers lying at various ports on terms and conditions set out therein. As per letter dated 14.9.1973 written by defendant No. 4, one of the condition was that initially the plaintiff had to make full payment on the basis of standard quality. It was further agreed that on the basis of analysis report, defendant No. 3 fixed price of substandard fertilizers and accordingly refund was to be made to the plaintiff.

It was the case of the plaintiff that as per the oral condition, the analysis report was to be obtained within one month and on issuing such report, bill was to be prepared immediately. The plaintiff on the aforesaid condition lifted fertilizers from various places by truck as well as by railway. It was the case of the plaintiff that in plaint the plaintiff has stated that as per the agreed terms the analysis reports were to be given to the plaintiff within a month and as the plaintiff did not receive such reports for long time, repeatedly informed the relevant authorities about the reports. However, they did not reply for a long time and for the first time on 16.4.1974, defendant No. 3 replied that they are awaiting the analysis report from the National Test House, Bombay and Calcutta and the plaintiff will be informed as and when such reports will be received by them. Thereafter the plaintiff made its own arrangement and got the reports. The total price paid to defendant No. 4 was Rs. 14,21,598.57 ps. and the total income of substandard fertilizers as per the analysis report would amount of Rs. 11,93,465.20 ps. and as such the plaintiff was entitled to refund of Rs.. 2,28,133.37 ps. The plaintiff's further case is that it was entitled to refund of Rs.. 49,321.31 ps. as per the agreed terms. As freight for the goods lifted by the truck, it was given only Rs. 48,056.31 ps. Therefore, balance of Rs. 1265.21 ps. yet remained due and payable to it. The said amount was paid on 16.4.1975. So the plaintiff has claimed Rs. 8679.19 ps. as loss of interest at the rate of 12%. The plaintiff has stated that the plaintiff is entitled to recover loss of interest of Rs. 2,28,233.27 at the rate of 12% which comes to Rs. 48,890.83 ps.

2.2 It was the claim of the plaintiff that the plaintiff is entitled to recover loss of interest on Rs. 2,28,133.27 ps. which comes to Rs. 48,890.83 ps. The total amount recoverable by the plaintiff with regard to the delivery of fertilizers given by Gujarat State Co-operative Marketing Society Ltd. amounted to Rs. 2,86,968.50 ps. The plaintiff has also claimed that it is entitled to Rs. 9,649/- on account of short supply of fertilizers. It was further stated that as the defendant failed to obtain analysis report, the plaintiff has to make its own arrangement and on the basis of the report the plaintiff has claimed Rs. 4,08,473.04 ps. as refund for the quantity of fertilizers supplied through defendant No. 5 and Rs. 70,201.97 ps. and total amount comes to Rs. 4,78,675.01 ps. In view of the same the plaintiff claimed different amounts which worked out to Rs. 5,95,899.57 ps. The plaintiff thereafter addressed

a suit notice on 21.7.1975 to the defendants and the defendant received suit notices. Since the defendants did not pay the amount, the suit was filed by the plaintiff.

2.3 It may be noted that defendant Nos. 1 and 3 have filed their joint written statement at Exh. 25 and denied the contentions. Defendant Nos. 2 and 5 have filed their joint written statement vide Exh. 19. Defendant No. 4 has filed written statement vide exh. 51 and denied the contention. From pleadings issues were framed vide exh. 39.

2.4 In this case parties have settled about various claims with defendant No. 2, 4 and 5 except claim of interest. According to the plaintiff, it is entitled to claim interest from defendant Nos. 1 and 2. It is the case of defendant Nos. 1 and 2 that they are not liable to pay any interest as the privity of contract was not with them but it was with defendant Nos. 2, 4 and 5 and the plaintiff. It is the case of defendant Nos. 2, 4 and 5 that as there was no condition about the interest, the plaintiff is not entitled to interest. In the alternative, their case was that the refund was to be made by defendant No. 1 on the basis of analysis report and therefore defendant No. 1 is liable to pay interest.

2.5 The learned judge has referred to settlement dated 6.9.1973 at Exh. 164 entered into between the parties and also letter written by the Gujarat State Co-operative Fruit & Vegetable Marketing Federation Ltd. to the Director of Agriculture, Government of Gujarat, Ahmedabad. It has been specifically stated that in this case the terms regarding interest was specifically deleted.

2.6 In this case there is no dispute about the payment of interest, rate of interest and the amount of interest. The only dispute is as to who should pay interest i.e. whether defendant No. 1 or defendant No. 2.

3. Mr M.A. Bukhari, learned A.G.P. appeared on behalf of the State of Gujarat. He submitted that no amount was received by original No. 2 and therefore the State Government was not liable to pay interest on the amount after 1.3.1976. He further stated that the State Government has acted as an agent of the Union of India, original defendant No. 1 and therefore, Union of India-defendant No. 1 should have been liable to pay interest amount. Learned A.G.P. Mr. Bukhari further

submitted that as State of Gujarat has acted as an agent of Union of India, State Government did not get any amount for the price of the fertilizers and it cannot be held liable.

4. We have considered the evidence of the plaintiff who has been examined at Exh. 58. He has stated that with defendant Nos. 2 and 4, he had an oral agreement that the analysis report will be given within one month. That a letter was written to defendant No. 2 by defendant No. 4 which is at Exh. 143. The plaintiff further stated that agreement was entered into with the Deputy Director of Agriculture. Defendant nos. 4 and 5 were the agents of defendant No. 2 Gujarat State. It was further stated that the privity of contract was with defendant No. 2 as per Exs. 60 and 61 dated 14.9.1973 and 15.9.1973 and from these documents it was found that the payment was to be made to the Central Government by book adjustment. He has stated that Government had orally agreed to pay interest in case of late payment.

5. We have also considered the letter at Exh. 65 dated 6.9.1973 and as per condition No. 10, analysis report was to be obtained as early as possible which means within a reasonable time. From the record it appears that the report was not received at the time of suit and also during the pendency of the suit. It means an unreasonable delay has been taken place for which the defendants are liable to pay interest. It is admitted by the witnesses that such reports were not obtained even though repeated demands were made to defendant No. 3. It is an admitted fact that so far as plaintiff is concerned, he has to pay interest for the amount raised for fertilizers and against that, if the Government does not submit analysis report in time, as agreed by the Government, the plaintiff is legally entitled to get interest as he has paid interest in this behalf.

6. We have also considered the evidence of Bhaskar Bapubhai Buch on behalf of defendant No. 3. He has admitted that report has not come within reasonable time, so letters were written to defendant No. 3 to send the report. We have also considered evidence of witness Dinubhai Dahyabhai who has been examined at Exh. 339. We have also considered evidence of witness Harilal Jethi who has been examined at Exh. 344. From the evidence it further comes out that the State Government as per conditions given to it by defendant No. 1, appointed defendant No. 4 first its agent and later on, defendant No. 5 as their agent and accordingly exh. 164 and 165 were executed between the plaintiff and the Gujarat

State.

7. From the record it appears that refund was to be made by defendant No. 1 to the plaintiff. It has also come out that full price was received by defendant No. 1. Initially there was a condition about interest. Thereafter, on assurance given by defendant Nos. 1 to 3, namely, that the analysis report will be received within a month or two. The plaintiff relied on the representation made by the said defendant and as a result, the condition about interest was deleted. However, it appears that analysis report was not received within reasonable time and therefore the plaintiff is entitled to claim interest from the defendants. In view of the above evidence the relationship of defendant No. 1 and defendant No. 2 is that of a principal and agent. Therefore for the acts and omissions of the agents, the principal is equally liable because in such circumstances, the acts done or omissions made are presumed to have been made by the plaintiff and therefore defendant Nos. 1 and 2 are equally liable for the interest amount. From the record it appears that it is agreed that the plaintiff has not to claim any interest after 1.3.1976 as this amount is included in amount of settlement of whole claim except interest from the date of transaction till 1.3.1976. The interest therefore from 17.12.1975 till 28.2.1976 would come to Rs. 19,142.50 ps. at the rate of 12%. Thus, the total amount payable by them together with interest amount mentioned above would come to Rs. 1,57,944.33 ps.

8. In view of the above, we are of the view that defendant Nos. 1 and 2 are jointly and severally liable to pay interest amount to the plaintiff. From the record it appears that the decree was already passed on 19.4.1980 and this judgement passed by the learned Joint Civil Judge (S.D.) was also treated as decree dated 19.4.1976.

9. In view of the same, the plaintiff's claim for interest of Rs. 1,57,944.33 ps. is allowed. Defendant Nos. 1 and 2 are jointly and severally liable to pay the said amount. The decree be considered as decree drawn on 19.4.1976 and accordingly the decree be drawn.

10. In the result, the appeal is dismissed with no order as to costs.

(K.R. VYAS, J)

(K.M. MEHTA, J)

(pkn)